

## REMARKS

### Rejections for Obviousness-Type Double Patenting

Claims 1-7, 9, and 10 stand rejected for obviousness-type double patenting over claim 47 of US Patent 6,013,340 in view of Lee et al., US Patent 5,605,961. Applicants traverse this rejection and request reconsideration of the claims.

Claims 1-7, 9, and 10 stand rejected for obviousness-type double patenting over claim 10 of US Patent 6,203,868 in view of Lee et al., US Patent 5,605,961. Applicants traverse this rejection and request reconsideration of the claims.

Claims 1-7, 9, and 10 stand rejected for obviousness-type double patenting over claim 22 of US Patent 6,652,940 in view of Lee et al., US Patent 5,605,961. Applicants traverse this rejection and request reconsideration of the claims.

Claims 1-7, 9, and 10 stand rejected for obviousness-type double patenting over claim 21 of US Patent 6,692,803 in view of Lee et al., US Patent 5,605,961. Applicants traverse this rejection and request reconsideration of the claims.

Each of the rejections relies on a combination with the Lee patent. The Office Action gives the same reason for combining the Lee patent in each instance. The Office Action argues that Applicants' claimed gas-filled cushioning device would be obvious because "the thermoplastic polyurethane formed from the reaction product of these reactants is a well known composition for formation of a thermoplastic molding composition as taught by Lee et al." Applicants do not claim a thermoplastic molding composition, however. And applicants do not claim generally thermoplastic molding, e.g., "a molding process comprising molding a composition." There is no

reason to select a particular component from Lee or from any other source merely because it is “well known” in some other context for some other purpose.

What the Lee patent teaches is that blends of polyurethane and polyolefin can be made more compatible by incorporating a reaction product of polyamide and modified polyolefin. This technology is not related to Applicants’ gas-filled cushioning device, nor is it related to the problem Applicants undertook to solve, which was to make a cushioning device that would be essentially permanently inflated with nitrogen, remaining inflated though subjected to repeated impacts of considerable force. The Lee patent lends no insight to this problem or to cushioning devices in general. The Lee patent is relevant only to compatibilizing blends of polyurethanes and polyolefins.

The Examiner’s argument is that the Lee polyurethane is being used in molding, therefore it would be obvious to make Applicants’ cushioning device from it. This makes no sense.

As Applicants have already pointed out, the Lee et al. patent is nonanalogous art. The test for whether a reference is analogous art is the Federal Circuit’s two-pronged test requires that “the reference is either in the field of the applicant’s endeavor or is reasonably pertinent to the problem with which the inventor was concerned in order to rely on the reference as a basis for rejection.” *In re Kahn*, 441 F.3d 977, 986-87 (Fed. Cir. 2006); *see also In re ICON Health and Fitness, Inc.*, 496 F.3d 1374 (Fed. Cir. 2007); *In re Clay*, 966 F.2d 656 (Fed. Cir. 1992). The test is not whether the reference is “analogous” to another piece of prior art. In this regard, the Examiner’s arguments on pages 10-14 are misplaced, as they do not apply the correct standard for determining whether a publication is analogous art.

The Lee patent concerns molding compositions in which a polyurethane and a polyolefin are compatibilized by adding a reaction product of a polyamide and modified polyolefin. The Lee patent is not in the field of the present invention, cushioning devices. Nor is the Lee patent relevant

to solving any problem faced by Applicants, as Applicants' cushioning device and multi-layer film thereof do not include either a polyolefin or a reaction product of a polyamide and modified polyolefin. Nor does the Lee patent address the problem of making a cushioning device that would be essentially permanently inflated with nitrogen, remaining inflated though subjected to repeated impacts of considerable force.

The Lee patent must do more than teach how to make a polyurethane. It must be relevant to Applicants' invention. It must give the skilled artisan a reason to make Applicants' claimed cushioning device. It does not.

### Conclusion

It is believed that all of the stated grounds of rejection and objection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections and objections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. The Examiner is invited to telephone the undersigned if it would be helpful for resolving any issue.

Respectfully submitted,

A handwritten signature in cursive script, reading "Anna M. Budde", is written over a horizontal line.

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